

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-2041

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-2041

GAYLORD W. ANGUISH,

Appellant,

-against-

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Sheet - <u>Gaylord W. Anguish v. United States of America,</u> Docket No. 76 C 1269	1
Docket Sheet - <u>United States v. Gaylord Anguish, 75 CR 50</u>	3
Indictments - 75 CR 48, 49, 50, 51, 52	9
Transcript of Proceedings of May 6, 1976 in 75 CR 48, 49, 50, 51, 52	19
Judgment of Conviction (75 CR 50) dated May 6, 1976	48
Order of U.S.D.J. Edward R. Neaher, dated May 12, 1976	49
Memorandum and Order of U.S.D.J. Edward R. Neaher, dated March 9, 1977	51

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PLAINTIFFS

DEFENDANTS

ANGUISH, GAYLORD

USA

GAYLORD ANGUISH

UNITED STATES OF AMERICA

CAUSE

28 USC 2255 motion to reduce of vacate sentence

Related case: 75 CR 51

ATTORNEYS

For plntff:
GAYLORD ANGUISH/pro se
Lewisburg Federal Prison
Lewis burg, Pa.

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

760

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ANGUSH

vs

USA

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NR.

PROCEEDINGS

6	COMPLAINT Motion to vacate sentence filed. (1)cg
-76	Amended motion to vacate sentence filed. (2)
77	BY NEAHER, J. MEMORANDUM AND ORDER dtd 3/9/77 that defendant is not entitled to relief on any of the eight grounds in the amendment and the 2255 motion is denied in its entirety. filed. (FILED IN 75-C-1346 Document #2)lg.
77	Clerks judgment entered. Ordered that motion to vacate, set aside or correct the sentence, is denied. (FILED IN 75-C-1346 Document#3)lg.
77	Notice of appeal (filed in 75 C 1346 document#4). Copy to C of A. ---
7	Petitioner's notice of appeal filed. (paid fee) (3)
-77	Civil appeal scheduling order ret 5-6-77 filed. mg (4)
-77	Entire file certified and mailed to C of A. mg ---
77	Acknowledgment received for index & record on appeal from C. of A. filed. (5)lg.
7	Petitioner's motion for reconsideration filed. mg (6)
-77	Order dtd 5-26-77 denying petitioner's motion for reconsideration filed. mg See doc #6. ----

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75 CR 50

NEAHER, J.

[illegible][illegible]

DATE	PROCEEDINGS
/21/75	Before DOOLING, J.- Indictment filed
/31/75	Before NEAHER, J.- Case called- Deft and counsel present- Deft arraigned and after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 2- Motion for reddetion of bail- denied without prejudice- bail fixed at \$100,000.00 surety bond- sentence adjd without date- bail extended to N.Y. City onlyA case adjd to 2/7/75 at 10:00 A.M. to determine psychiatric treatment
/31/75	Notice of appearance filed
13/75	Before NEAHER, J.- Case called- Deft and counsel present- Deft to be sent to West Street for a psychiatric treatment before Dr. Golstein- Govt to submit order

(OVER)

75CR 50

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DATE	PROCEEDINGS
2-13-75	By NEAHER, J - Order filed that the deft be examined for the purpose of sentence (as to mental health of the deft) by Dr.Naomi Goldstein, at the Federal House of Detention for a period not to exceed 30 days and a written report of the results of such study be furnished to the Court as soon thereafter as possible.
3/7/75	By NEAHER, J.- Order dated 3/6/75 filed that the deft be taken to the office of Dr. Richard Kohl on 3/12/75, e tc.
3/14/75	Certified copy of Order dated 3/6/75 retd and filed- executed
4-16-75	By NEAHER, J -Order filed to take the deft under security measures to the office of Dr. Richard Kohl located at the N.Y. Hospital, Payne Whitney Psychiatric Clinic at 2:30 PM on 4-24-75.
5-14-75	Before NEAHER, J - case called - deft & counsel R.Ballin present - case adjd to May 21, 1975 at 2:00 PM for sentence.
5/22/75	Before NEAHER, J.- Case called- Deft and counsel R. Ballin present- AUSA R. Katzberg to submit order committing deft for psychiatric observation-Defense counsel to submit order-Case adjd without date for sentence
5/23/75	By NEAHER, J.- Order of Commitment dated 5/22/75 filed that the deft G. Anguish is committed for psychiatric examination, etc. Copies sent to the Marshal.
5/23/75	Writ retd and filed. Executed.
5-27-75	By NEAHER, J - Order filed to take the deft, who is presently in custody of the U.S.Marshall, to the office of Dr.Richard Kohl, N.Y. Hospital, Payne Whitney Psychiatric Clinic at 3:00 PM on May 29, 1975 for therapeutic treatment on that date, etc. Copy to Marshal.
5-30-75	By Neaher, J - The defendant not having been brought for treatment as ordered, the date and time above stated are hereby amended to read "at 2:30 PM on June 4, 1975" and the order otherwise remains in effect. (see notation of Judge Neaher on bottom of Order of May 27, 1975)
6-6-75	Order retd and filed - deft delivered to N.Y. Hospital, Psychiatric Clinic, Dr. Richard Kohl, to undergo treatment etc.
8/15/75	Stenographers Transcript dated 1/31/75 filed
8-21-75	2 Stenographers transcripts filed, one dated May 14 and one dated May 22, 1975.
8-28-75	Letter from deft filed for revoking his plea of guilty, etc. for requesting of minutes of all court actions ; for leave to allow the deft to proceed in forma pauperis, (pro se)all letters forwarded to Chambers.

CRIMINAL DOCKET

DATE	PROCEEDINGS
8-28-75	Stenographers transcript filed dated 2-13-75.
9/8/75	Before NEAHER, J.- Case called- Deft and counsel present counsel Robert Ballin's motion to be relieved-granted-
9/8/75	Financial affidavit filed
9-11-75	Motion for reduction of bail and brief in support of motion filed (forwarded to Chambers)
10/1/75	Notice of motion to withdraw plea of guilty filed-ret. 10/10/75
10-1-75	Govts Memorandum of Law filed.
10-2-75	Order received from Chambers unfiled (for release of deft to the office of Dr. Richard Kohl, etc) Notation by Judge Neaher on bottom of letter as follows: The within application is denied. If psychiatric counseling is required, the available facilities at the Metropolitan Correction Center are to be utilized. (dated Oct. 1, 1975 but received in Clerks Office on Oct. 2, 1975 for filing)
10/10/75	Before NEAHER, J.- Case called- Deft and counsel present- deft's motion to withdraw plea adjd without date- deft's motion to reduce bail- decision reserved-bail of \$100,000.00 contd-
10/10/75	By NEAHER, J.- Order filed that deft be examined as to his mental condition at Kings County Hosp. by Dr. D. Schwartz, etc.
10-29-75	Before NEAHER, J - case called - deft & counsel John Corbett present - defts motion to withdraw previously entered plea of guilty argued - motion granted - execution stayed for 24 hours - bail contd.
10-30-75	Stenographers transcript filed dated Oct. 29, 1975
11/31/75	Before NEAHER, J.- Case called- Deft not present- counsel present-deft's motion to withdraw plea of guilty-motion granted on 10/29/75-execution of withdrawal of plea stayed indefinitely
11-6-75	By NEAHER, J - Order filed that the deft be examined at the Medical Center, Springfield, Mo. and a written report of such examination be rendered to the Court, said examination not to exceed 15 days, etc.
11-13-75	Certified copy of ^{Order of} And Commitment ret'd and filed - Deft delivered to Springfield Medical Center, Springfield, Mo.
12-12-75	Before NEAHER, J - case called - deft & atty John Corbett present - adjd to Jan. 12, 1976 for hearing - bail contd.
1/6/76	Before NEAHER, J.- Case called- counsel present- govt's application for ruling on atty-client privilege- granted

DATE	PROCEEDINGS
1-12-76	Before NEAHER, J - case called - deft & atty present - hearing on defts motion to withdraw his guilty plea begun - hearing concluded - decision reserved.
2-10-76	By NEAHER, J - Memorandum and Order filed granting defts motion to withdraw plea of guilty .Further the Court finds the deft competent to stand trial - Matter is set down for trial on Apr.19, 1976 at 10:00 A.M. A final pre-trial status report will be held on Mar.15, 1976 at 10:00 A.M.
2/27/76	Before NEAHER, J.- Case called- deft not present- counsel present- deft's bail application heard and denied-case adjd to 4/19/76 for trial bail contd
3-16-76	Motion for rehearing of reduction of bail; motion for order of dismissal filed (received from Chambers.)
3-16-76	Before NEAHER, J - case called - deft & counsel John Corbett present - defts motion for reduction of bail denied - adjd to 4-19-76 for trial.
3/16/76	Letter from deft dated 3/9/76 and notice of motion to dismiss filed
3-18-76	Stenographers transcript filed dated March 16, 1976
3-24-76	Voucher for Expert Services filed
3-25-76	Motion for bail hearing filed (received from Chambers & ret'd after filing same)
3-25-76	By NEAHER, J - Ord r filed that the deft be examined as to his mental capacity by Drs. Henry Fain and Daniel Schwartz of Kings County Hospital, Bklyn, N.Y. and that all written reports of such examination be furnished to the Court etc.
3-30-76	Order ret'd and filed - executed.
4-5-76	By Notice of motion filed under Rule 12.2(to introduce testimony relating to a mental disease, etc.)
4-6-76	By NEAHER, J - Order filed that Dr. Jack Eardley and Dr. Harry Fain examine the deft and conduct such tests as they feel necessary for the purpose of determining whether at the time of the commission of the alleged crime on 7-2-74, the deft was not responsible etc, as a result of a mental disease or defect, etc. (Order dated 4-5-76)
4-6-76	By Neaheer, J - Authorization for preparation of trial filed.
4-6-76	By Neaheer, J - Authorization for psychiatric examination and testimony at trial etc. filed.
4/9/76	Notice of motion to suppress filed ret. 4/19/76

CRIMINAL DOCKET

PROCEEDINGS

DATE	PROCEEDINGS
4-19-76	Before NEAHER, J - case called - deft & counsel J. Corbett present - suppression hearing begun - defts motion to suppress is denied - Trial ordered and begun - Jurors selected and sworn - Trial contd to 4-20-76
4/20/76	Before NEAHER, J.- Case called- deft and counsel present- trial resumed Govt rests-deft's motion to dismiss and for judgment of acquittal denied trial contd to 4/21/76 at 10:00 A.M.
4/21/76	Before NEAHER, J.- Case called- deft and counsel present- trial resumed deft rests- trial contd to 4/22/76 at 10:00 A.M.
4-22-76	(2) two stenographers transcripts filed (pgs 1 to 391)
4-22-76	One stenographers transcript filed dated Jan. 12, 1976.
4-22-76	Before NEAHER, J - case called - deft & counsels present - trial resumed - deft moves for an order of dismissal and judgment of acquittal - motions denied - Jury retires to deliberate - jury returns with a verdict of guilty as to both counts - jury polled- jury discharged - defts bail status contd - case adjd to May 6, 1976 for sentence. Trial concluded.
4/23/76	Stenographers Transcript dated 4/22/76 filed
4/23/76	Voucher for expert services filed (court reporter)
5-6-76	Before NEAHER, J - case called - deft & counsel Mark Landsman and John Corbett present - deft is sentenced to imprisonment for a period of 10 years pursuant to 18:4208(a)(2) with credit for time served - sentence to be concurrent with the other indictments - execution of sentence is stayed - deft to be taken there by a U.S. Marshal and will be obliged to surrender to the Marshal at the end of the 60 days.
5-6-76	Judgment & Commitment filed - certified copies to Marshal
5-6-76	By Neaheer, J - Order filed that the US Marshals shall escort the deft to the Central Evaluation Service of the Payne-Whitney Clinic of the N.Y. Hospital on Friday, May 7, 1976 at or about 9:00 am
5/7/76	By NEAHER, J.- Order filed that Marshal's deliver deft to V.A. Hospital Northport L.I., etc.
5/7/76	Notice of appeal filed (No fee)
5/7/76	Docket entries and duplicate of notice of appeal mailed to c of a

DATE	PROCEEDINGS
5-11-76	By NEAHER, J. -Copy of order for psychiatric examination returned and filed/executed.
5-12-76	By NEAHER, J - Order filed that the U.S.Marshal for the Eastern Dist. of NY transport the deft frothwith from the Veteran's Admin. Hospital at Northport to MCC in order to begin serving sentence imposed on May 6, 1976 by the Court and further Ordered that Dr. Troiano's "progress notes" on the deft at the Veterans Admin. Hospital be released to the custody of this Court.
5-13-76	Order filed returned - copy or Order and Judgment & Commitments to MCC 5-12-76; Judgment & Commitment ret'd and filed - deft. delivered on May 12, 1976 to MCC, NY. Order returned and filed executed - deft del. to Payne Whitney Clinic.
5-13-76	Voucher for expert services filed (The Wackenhut Corp.-field investig.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

GAYLORD ANGUISH,

Defendant.

Cr. No. 75CP48
(T. 18, U.S.C., 52113(a)
and 52113(d))

Jan 21, 1975

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of March, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 680 Fort Salonga Road, Northport, New York, approximately Five Thousand Eight Hundred Sixty Seven Dollars (\$5,867.00), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, 52113(a)).

COUNT TWO

On or about the 15th day of March, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 860 Fort Salonga Road, Northport, New York, approximately Five Thousand Eight Hundred Sixty Seven Dollars (\$5,867.00), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America the deposits of

which were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant GAYLORD ANGUISH did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §2113(d)).

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A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
Eastern District of New York

U.S. Atty EDNY

Criminal Division

Prepared Date

Checked

R.K.

11/20/75

Approved

[Signature]

12/01/75

Date of filing

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



11

Neuber, J.

----- X

UNITED STATES OF AMERICA

- against -

GAYLORD ANGUISH,

Defendant.

Cr. No. 75 CR 49
(T. 18, U.S.C., §2113(a)
and §2113(d))

Jan 24, 1975

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 17th day of May, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 680 Fort Salonga Road, Northport, New York, approximately Four Thousand Four Hundred Eighteen Dollars (\$4,418.00), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a)).

COUNT TWO

On or about the 17th day of May, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 680 Fort Salonga Road, Northport, New York, approximately Four Thousand Four Hundred Eighteen Dollars (\$4,418.00), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America the deposits of

which were then and there insured by the Federal Deposit In-¹²
surance Corporation and in commission of this act and offense
the defendant GAYLORD ANGUISH did assault and place in jeopardy
the lives of the said bank employees, as well as the lives of
other persons present by the use of a dangerous weapon. (Title
18, United States Code, §2113(d)).

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

GAYLORD ANGUISH,

Defendant.

Heckert
Cr. No. 15 CR 50
(T. 18, U.S.C., §2113(a)
and §2113(d))
Jan 20, 1975

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 2nd day of July, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Bankers Trust of Suffolk, 1174 Jericho Turnpike, Commack, New York, approximately Eight Thousand Three Hundred Ninety Six Dollars (\$8,396.00), in United States currency, which money was in the care, custody, control, management and possession of the said Bankers Trust of Suffolk the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a)).

COUNT TWO

On or about the 2nd day of July, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Bankers Trust of Suffolk, 1174 Jericho Turnpike, Commack, New York, approximately Eight Thousand Three Hundred Ninety Six Dollars (\$8,396.00), in United States currency, which money was in the care, custody, control, management and possession of the said Bankers Trust of Suffolk the deposits of which were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant GAYLORD ANGUISH did assault and place in jeopardy

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- 2 -

the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §2113(d)).

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
Eastern District of New York

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Becker, J.
75cr 51

----- X
UNITED STATES OF AMERICA

- against -

Cr. No. _____
(T. 18, U.S.C., §2113(a)
and §2113(d))

GAYLORD ANGUISH,

Defendant.
----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 29th day of August, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Republic National Bank, 693 East Jericho Turnpike, Huntington Station, New York, approximately Three Thousand Two Hundred Fifteen Dollars (\$3,215.00), in United States currency, which money was in the care, custody, control, management and possession of the said Republic National Bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a)).

COUNT TWO

On or about the 29th day of August, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Republic National Bank, 693 East Jericho Turnpike, Huntington Station, New York, approximately Three Thousand Two Hundred Fifteen Dollars (\$3,215.00), in United States currency, which money was in the care, custody, control, management and possession of the said Republic National Bank the deposits of which were then and there insured by the Federal Deposit Insurance

Corporation and in commission of this act and offense the defendant GAYLORD ANGUISH did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §2213(d)).

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
Eastern District of New York



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

GAYLORD ANGUISH,

Defendant.

----- X
THE GRAND JURY CHARGES:

Neale, J.
75 Cr 52
Cr. No. _____
(T. 18, U.S.C., §2113(a)
and §2113(d))

COUNT ONE

On or about the 26th day of November, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Marine Midland Tinker National Bank, 180 East Main Street, Smithtown, New York, approximately Ten Thousand Nine Hundred Eighteen Dollars (\$10,918.00), in United States currency, which money was in the care, custody, control, management and possession of the said Marine Midland Tinker National Bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a)).

COUNT TWO

On or about the 26th day of November, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Marine Midland Tinker National Bank, 180 East Main Street, Smithtown, New York, approximately Ten Thousand Nine Hundred Eighteen Dollars (\$10,918.00), in United States currency, which money was in the care, custody, control, management and possession of the said Marine Midland Tinker National Bank the deposits of which were then and there insured by the Federal

- 2 -

Deposit Insurance Corporation and in commission of this act and offense the defendant GAYLORD ANGUISH did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §2113(d)).

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
Eastern District of New York

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 In the Matter of

5 UNITED STATES OF AMERICA,

6 - against -

75 CR 50

7 GAYLORD ANGUISH,

8 Defendant.

9 -----X
10
11 United States Courthouse
12 Brooklyn, New York

13 May 6, 1976
14 10.00 o'clock A.M.

15 B e f o r e :

16 HONORABLE EDWARD R. NEAHER, U.S.D.J.
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22 HENRI LeGENDRE
23 OFFICIAL COURT REPORTER
24
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1 A P P E A R A N C E S :

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3 DAVID G. TRAGER, ESQ.
4 United States Attorney
for the Eastern District of New York

5 BY: RICHARD APPLEBY, ESQ.
6 Assistant U.S. Attorney

7 JOHN C. CORBETT, ESQ.
8 Attorney for Defendant

9 MARK LANDSMAN, ESQ.
10 Attorney for Defendant
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MR. CORBETT: Good morning, Judge.

THE COURT: I'm not sure that you have had an opportunity to read the supplemental memorandum.

MR. LANDSMAN: We went over that yesterday.

THE COURT: I have received a letter from the defendant himself.

Are you aware of that?

MR. CORBETT: Yes, we had copies of it too, Judge.

THE COURT: Now, is there any reason why sentence should not be imposed at this time?

MR. CORBETT: No legal cause why sentence should not be imposed.

THE COURT: I suppose one or both of you will make statements.

MR. CORBETT: I'll start.

MR. LANDSMAN: If he forgets anything I'll fill in.

MR. CORBETT: Judge Neaher, this is a case with which you have lived, and I think it's a case that you know more about than any other matter pending before Your Honor. It's a case, of course, that troubled me a great deal; it was tried. We presented, I felt fine psychiatric testimony, unfortunately, the jury, a ju:

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2 of layman would not pay attention to the psychiatric
3 testimony. I think so it's rather apparent that this
4 man, whatever this man did, it was as a result of
5 mental aberrations. Certainly, the psychiatrist who
6 testified for the defense, both Dr. Blum and Dr.
7 Naomi Goldstein were far, if I might say superior in
8 their scientific analysis of the case than those
9 psychiatrists the government presented.

10 The jury has passed on this, there is nothing
11 we could do about that. There remains the question of
12 first rehabilitation of the man, and second the ques-
13 tion of any punishment that Your Honor feels necessary
14 to impose on him.

15 Now, I feel that the man who stands beside me
16 is not a criminal. Incidentally, the Probation Depart-
17 ment at the time the government presented evidence of
18 a prior burglary conviction in 1963, the Probation
19 Department had discovered that had long been dismissed.
20 It was not a conviction, so the man had no criminal
21 record. I feel at this time -- first let me preface
22 my remarks by saying that I conferred with Dr. ^{Kohl} ~~Cole~~ of
23 Paine Whitney Psychiatry Clinic, they told me the
24 clinic would be willing to take this man in if he was
25 on probation and hold him for sixty days under Medicaid.

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2 My colleague conferred with the Veterans Hospital in
3 North Port and they too say they could take him as a
4 patient if he's on probation; so that I feel this man
5 needs medical attention, psychiatric attention. He's
6 been in custody a long time and he's seen many
7 psychiatrists, but all for diagnostic purposes. I
8 don't think there is one psychiatrist, with the excep-
9 tion of the boys from Springfield, all the psychiatrists
10 say he needs psychotherapy bad and should have it, in
11 the words of Dr. Cole, as much and as long as possible.
12 I feel that if Your Honor can put this man on probation
13 so that he can receive the psychiatric help he needs
14 so bad he'll never appear in a criminal court as a
15 defendant.

16 MR. LANDSMAN: The only thing that I would add
17 on the defendant's behalf; in examining the probation
18 report I had an opportunity to look at the supplemen-
19 tary report which was done after the trial but I also
20 looked at the report after he pleaded back in January.
21 I might point out that at that time, this is before
22 any amnesia or any problem like that arose, he told
23 the probation officer that while he admits he's guilty,
24 he couldn't explain his own motives. He's glad he was
25 caught in order to learn the reason for his criminal

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2 behavior: this was way back in February of 1975, this
3 was directly after he was arrested, directly after he
4 pleaded guilty and awaiting sentence. This is exactly
5 the way he felt, and I submit, that his feelings haven't
6 changed even with this amnesia situation arising; his
7 feelings haven't changed from then until after the
8 trial verdict. I think the supplementary report bears
9 that out, and that's about all that I think I want to
10 add to what Mr. Corbett said.

11 THE COURT: Well now, Mr. Corbett, you mentioned
12 that Dr. Cole up at the clinic said that he could
13 arrange to place him there for some 60 days.

14 MR. CORBETT: The question who is going to pay
15 for this ^{same} case up, and I told Dr. Cole that was a prob-
16 lem that we have to work out. He said well, I could
17 take him in the clinic now for 60 days under Medicaid
18 as an in-patient, not out-patient, at the Paine Whitney
19 Psychiatric Clinic where he could receive all the treat-
20 ment necessary and then work out how we are going to
21 pay for the balance of his treatment. Of course while
22 I was at Paine Whitney Mr. Landsman was checking with
23 the Veterans Administration.

24 THE COURT: Suppose I was to do this, suppose I
25 suspended imposition of a sentence for that period of

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2 time, permit those arrangements to be made and let us
3 see what the progress is at the end of that period of
4 time.

5 MR. CORBETT: Fine. I'll call Dr. Cole this
6 morning and report back to Your Honor's chambers what
7 arrangements could be made.

8 THE COURT: Does the government have any problem?

9 MR. APPLEBY: Is it your intention to resentence
10 the defendant after a period of time?

11 THE COURT: I am suspending imposition of a
12 sentence at this time right now pending the outcome of
13 the arrangements, whatever they are, that can be made
14 for him to enter the Paine Whitney Clinic as indicated
15 can be done for a period of 60 days for treatment.

16 MR. CORBETT: For treatment, not for diagnostic
17 purposes.

18 THE COURT: I suppose the effect of that is to
19 place him on a period of probation for that period of
20 time; he must remain in federal custody.

21 MR. APPLEBY: The purpose would be for diagnosis.

22 MR. CORBETT: No. I tried to make that clear;
23 this is for treatment and not for diagnosis. He is not
24 being sent to Paine Whitney Clinic for diagnosis. This
25 is for treatment, psychotherapy should commence at that

time.

MR. APPLEBY: Your Honor, I just talked to one of my colleagues, the government's position would be that we would prefer instead of suspending the imposition of sentence, you simply adjourn the sentence pending the outcome of whatever occurs at the Paine Whitney.

THE COURT: I'll accept that situation.

MR. CORBETT: We have a further problem, we have some other indictments pending.

THE COURT: I don't expect the government plans to bring those trials within 60 days.

MR. LANDSMAN: His bail conditions would have to be altered so he could be released. I assume his bail conditions refer to all five indictments, since this is the only one disposed of the other four are pending, how could he be transported from MCC to be kept in to Paine Whitney unless there was some sort of change in his bail conditions.

MR. APPLEBY: He would still be in custody, Your Honor.

MR. LANDSMAN: Well, I think Your Honor that Paine Whitney is not going to keep him in any security situation. I just don't see where they have the facilities for that.

MR. CORBETT: I spoke to Dr. Cole about that.

I think it should be made quite clear that Paine Whitney will not consider him as a prisoner, he's a patient. They have no facilities for keeping anyone in custody. They treat everyone there as a patient.

MR. APPLEBY: Well, Your Honor, you remember the testimony at trial, the defendant was a fugitive for a period of time. He wore disguises to evade law enforcement officers; he jumped bail in California, these kind of arrangements would be very very dangerous.

MR. CORBETT: I believe the California court, Mr. Appleby, dismissed the bail jumping indictment.

MR. APPLEBY: But he did jump bail.

THE COURT: I think much has happened.

MR. LANDSMAN: He's been incarcerated some sixteen months until now, even if Your Honor just put a straight sentence on him at this time he might be eligible for parole very shortly. I think it's been clear that everyone involved here including the defendant, the probation officers, psychiatrists all agree that he needs treatment; this is an opportunity for him to get treatment.

What I would suggest is that possibly the government would consent to a change in his bail

1 status until the adjourned date of his sentence, and
2 he would still be under the thumb of the government as
3 far as the bail jumping would be concerned. He might
4 be put out on a PRO for this 60 day sentence.
5

6 MR. APPLEBY: Dr. Goldstein, who was the
7 psychiatrist, was very sympathetic to the defendant.

8 THE COURT: I understand, my information is that
9 she is not in a position to give him the psychiatric
10 attention that he needs at the MCC. She was very
11 sympathetic and had definite opinions, however, I must
12 accept the verdict of the jury as far as the results
13 of the case, the case is decided. However, I am now
14 confronted with the problem of sentence in a situation
15 where there is -- even the probation report, I assume
16 you read the supplemental report, acknowledges his
17 suffering from mental illness.

18 MR. CORBETT: I'm sorry I didn't mean to inter-
19 rupt Your Honor.

20 THE COURT: It points out succinctly, all re-
21 ports indicate that the defendant is suffering from
22 mental illness and agree that psychotherapy would be
23 beneficial in regard to his institutional adjustment
24 and incarceration. The defendant has not indicated
25 any behavior problems as reported by prison personnel

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2 and is essentially introverted and remains to himself.
3 It seems to be that in view of the willingness of Dr.
4 Cole at Paine Whitney, to take him for a period of 60
5 days, begin a course of treatment, that the defendant
6 should be given the opportunity to have that. Now,
7 how to do that might well be the problem, whether re-
8 adjustment of bail would accomplish it, I'm not sure.
9 I don't know why it wouldn't -- in a way he would still
10 be in federal custody.

11 THE COURT: Of course, this would not dispose
12 of the other indictments, but on the indictment that
13 he's been convicted I could place him -- impose a
14 sentence, I could suspend the execution for a period
15 of 60 days. Meanwhile placing him on probation for
16 purposes of this treatment. If the government would
17 still insist on his detention on the other outstanding
18 indictments then that's a problem, I understand that,
19 that would frustrate the purpose the court would very
20 much like to have pursued here in view of what is said
21 in the probation report itself, the presentence report.

22 MR. APPLEBY: That's something that I would
23 like to discuss with my superiors what to do with the
24 other indictments.

25 THE COURT: I could understand that. Is it

possible to adjourn this to later on this afternoon to give you an opportunity to do that.

MR. APPLEBY: What specifically would you want me to determine.

THE COURT: In other words, one alternative is to impose a sentence, suspend its execution for a period of 60 days, place him on temporary probation during that period of time on the special condition that he immediately be admitted as an in-patient at the Paine Whitney Institute for the purposes of psychiatric treatment; that, of course, does not dispose of the problem that there are other outstanding indictments under which he is held on bail. Of course, I don't know what the government's intention would be with respect to those indictments.

MR. APPLEBY: Do I understand it would be Your Honor's intention to place the defendant -- suspend the imposition of sentence, place him on probation for 60 days, no further probation and if he should --

THE COURT: Or as I say, impose a sentence and suspend its execution.

MR. APPLEBY: As far as the other indictments run concurrent sentences with respect to all the other indictments.

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2 THE COURT: He hasn't pleaded yet.

3 I don't know what the intention --

4 MR. CORBETT: I have that in mind, to dispose of
5 all the indictments this morning.

6 MR. APPLEBY: Mr. Corbett mentioned that to me.

7 THE COURT: I ^Swa^An't aware of that. I would, of
8 course, be willing to impose concurrent sentences if
9 that would help that situation.

10 MR. APPLEBY: I don't see what there is for me
11 to determine.

12 MR. LANDSMAN: What Mr. Appleby was going to
13 determine, whether the government was going to move to
14 dismiss or whether they were not going to move to
15 dismiss, it becomes academic if the defendant pleads
16 to the other four; and now Your Honor has all five
17 before him for purposes of sentence. We could waive
18 our time on it.

19 THE COURT: If you are prepared to proceed on
20 that basis then.

21 MR. LANDSMAN: Certainly in view of Your Honor's
22 statement --

23 THE COURT: We would have to accept his pleas
24 on these other indictments.

25 MR. LANDSMAN: Your Honor would have to go

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2 through the fact statements on each.

3 THE COURT: I suppose I would. We would have
4 to put a little time aside for that.

5 What do you want, to do it now or at
6 two o'clock?

7 MR. APPLEBY: The only suggestion that I would
8 have, is the custom of our office not to make any
9 suggestions. The defendant would be on probation for
10 60 days and there would be no further hold that anybody
11 would have on him after the 60 days, and perhaps Your
12 Honor might consider a longer period of probation at
13 least.

14 THE COURT: I would suspend the execution of
15 sentence, I would impose a sentence, the execution of
16 which would be suspended for a period of 60 days to
17 await the conclusion of the period of treatment. He
18 would then be required to surrender himself under the
19 60 day stay at which time the situation could then be
20 reviewed in the light of the treatment that he has
21 received in the 60 days; you understand, and the doctor's
22 report at that time -- do you follow me.

23 MR. APPLEBY: After 60 days?

24 THE COURT: In other words, a specific prison
25 sentence would be imposed, execution of which --

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MR. APPLEBY: You would sentence him for a term of years and then suspend it?

THE COURT: That's right, for a period of 60 days pending his entering this Paine Whitney Institute for that period of time.

MR. DePETRUS: It may be a matter of semantics, the sentence would not be suspended it would be stayed.

THE COURT: All right, stayed.

MR. CORBETT: At the end of 60 days, Your Honor would call us in and reassess?

THE COURT: That's right. And, of course, if you're going to cover the other indictments, of course, it would apply across the board.

Do you want an opportunity to discuss it with anyone upstairs?

MR. APPLEBY: If they are going to take a plea I don't think there is anything further to discuss.

THE COURT: I have four more.

MR. APPLEBY: 75 CR 49; 75 CR 50 he was tried on; 75 CR 51 and 52.

THE COURT: I thought I had reference to six.

MR. CORBETT: There was six but only five indictments.

Shall we proceed?

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2 THE COURT: Have you discussed this with the
3 defendant?

4 MR. CORBETT: Yes; and we are ready to proceed.

5 THE COURT: Were pleas of not guilty originally
6 entered?

7 MR. APPLEBY: I have no indication on my file.
8 Mr. Katzberg handled the case at that time; that plea
9 of not guilty was entered -- it may have been.

10 THE COURT: I don't remember either.

11 He may not have actually been arraigned
12 on these indictments.

13 -- You weren't in it at the beginning.

14 According to my own office record card,
15 no plea was ever entered to the other indictments; that
16 is the card merely shows he pleaded guilty on January
17 31, 1975 to one count of indictment 75 CR 50 which was
18 the case --

19 MR. LANDEMAN: That was tried?

20 THE COURT: That was tried after he was allowed
21 to --

22 MR. CORBETT: If the court would arraign him on
23 these indictments we'll enter a plea of guilty on each
24 one.

25 THE COURT: He wishes to enter a plea of guilty?

MR. CORBETT: Yes.

THE COURT: Now, I don't propose to go through this four times, I'm simply going to inform the defendant that his attorneys are indicating to the court that you wish to plead guilty to four outstanding indictments against you, each one charging bank robbery on a different date, which I will ^{go} in to briefly.

You have never been afforded an opportunity heretofore to plead to those indictments, but as I understand it, you wish to plead guilty to each and every one; is that correct?

DEFENDANT ANGUISH: Yes.

THE COURT: Taking them serial order, 75 Criminal 48 charges that on or about March 15, 1974, -- each one by the way contains two counts, so I'm going to say in substance that each one charges, and this one in particular charges that on or about March 18, 1974, you committed a bank robbery at the National Bank of North America, 684 Salonga Road, North Port, where you took approximately \$5,867, and in the course of it used a dangerous weapon to accomplish the robbery.

The next indictment 75 CR 49 charges that on or about May 17, 1974, you again entered the same National Bank of North America at 684 Salonga

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2 Road, North Port, New York, and there took \$4,418 from
3 employees of that bank, again used a dangerous weapon
4 in order to accomplish the robbery.

5 The third outstanding indictment 75 Crimi-
6 nal 51 charges that on or about August 29, 1974, you
7 entered the Republic National Bank, Jericho Turnpike,
8 Huntington Station, New York, and there took the sum of
9 \$3,250 from employees of that bank and used a dangerous
10 weapon in order to accomplish that bank robbery.

11 And 75 CR 52 charges that on or about
12 November 26, 1974, you entered the Marine Midland
13 Tinker National Bank, 180 East Main Street, Smithtown,
14 New York, and took the sum of \$10,918 from employees
15 of that bank, used a dangerous weapon in order to
16 accomplish the robbery.

17 Now, as I said each of those contains
18 two counts, one of robbery and the second count on
19 each count, one of placing the lives of employees in
20 jeopardy and assaulting them by use of a dangerous
21 weapon. And now, as I understand, you are offering to
22 plead guilty to each count. You understand that each
23 count in itself is a separate offense, although the
24 court by law might impose only one sentence with regard
25 to the most severe count and in each case that would

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2 expose you to the liability of sentence by the court
3 to twenty-five years for each separate bank robbery;
4 you understand that, virtually a life sentence; you
5 know that?

6 DEFENDANT ANGUISH: Yes.

7 THE COURT: Now, despite the fact that you have
8 already been tried on a bank robbery which was part of
9 a series here in this court and had been found guilty
10 by a jury in that case; you understand you would be
11 entitled to a trial on these other bank robberies; you
12 understand that?

13 DEFENDANT ANGUISH: Yes, sir.

14 THE COURT: And that in each case, ^{ib} the govern-
15 ment proceeded that way you would be entitled to a
16 separate jury and a separate jury might be persuaded
17 by your counsel on evidence in the case that a jury
18 could find you guilty on it, ^{or} they might find you not
19 guilty; you understand that?

20 DEFENDANT ANGUISH: Yes.

21 THE COURT: You understand that having gone
22 through this trial that your counsel here would have
23 the opportunity to produce perhaps some additional
24 evidence that may not have been available at the other
25 trial, they would have the opportunity to cross examine

1
2 government witnesses and persuade the jury, despite
3 what happened in the other case, you might be acquitted
4 of these charges; you understand that?

5 DEFENDANT ANGUISH: Yes.

6 THE COURT: If you persist in your offer to
7 plead guilty you give up all those rights, trial by
8 jury and opportunity to appeal, but you still have in ^{that}
9 the other case, do you understand that? [^]

10 DEFENDANT ANGUISH: Yes.

11 THE COURT: And all that will be given up, you
12 would still be liable for the sentence ^{at} although you
13 had been found guilty by a jury; do you realize that? [^]

14 DEFENDANT ANGUISH: Yes.

15 THE COURT: Has anyone threatened you or coerced
16 you to offer pleas of guilty on these four other bank
17 robberies that are in the indictments that I mentioned?

18 DEFENDANT ANGUISH: No.

19 THE COURT: Now, of course, you have heard the
20 court indicate that it might impose concurrent
21 sentences, and I want to be sure that you understand
22 that that was not made as a promise in the sentence,
23 not that the court would not be bound by it, but in
24 view of the statements made by counsel both for the
25 government and defense here, it would appear that this

would be an appropriate resolution of this series of events; do you understand that? I don't want you to take the position that you ^{are} ~~have~~ foregoing rights because the court made that statement about a concurrent sentence. Do you understand what I'm saying?

DEFENDANT ANGUISH: Yes, sir.

THE COURT: I also have to be satisfied that these events did occur.

Now, I know that there was some evidence at trial, for instance, on March 15, 1974, did you enter the National Bank of North America at 684 Salonga Road, North Port, New York, and take \$5,687 from that bank?

DEFENDANT ANGUISH: I am convinced that I robbed that bank.

THE COURT: And you are convinced that you did it in a manner similar to that which was described at the trial in this case, in the case that was tried, you had a weapon, a black gun with you that you displayed at that time.

DEFENDANT ANGUISH: Yes, I am.

THE COURT: And again, when you entered the same bank about a month later on May 17, 1974, are you convinced now that you did enter that bank at that time

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2 and take the sum of \$4,418?

3 DEFENDANT ANGUISH: Yes, I am.

4 THE COURT: And again, used that same black
5 revolver, whatever it was that you had?

6 DEFENDANT ANGUISH: Yes.

7 THE COURT: And on August 29, 1974, did you
8 enter the Republic National Bank at 693 East Jericho
9 Turnpike, Huntington Station, New York and there take
10 approximately \$3,215 from that bank?

11 DEFENDANT ANGUISH: Yes, I'm convinced that I
12 robbed that bank.

13 THE COURT: And using the same weapon or revol-
14 ver that you had on the other occasion?

15 DEFENDANT ANGUISH: Yes.

16 THE COURT: Finally on November 26, 1974, did
17 you enter the Marine Midland Tinker National Bank at
18 180 East Main Street in Smithtown, Long Island, and
19 there take the sum of \$10,918?

20 DEFENDANT ANGUISH: I'm convinced that I robbed
21 that bank.

22 THE COURT: And that you then also used the
23 same weapon that had been placed in evidence in the
24 trial here?

25 DEFENDANT ANGUISH: Yes.

1
2 THE COURT: Are there any other questions that
3 counsel would wish the court to put to the defendant
4 at this time that you can think of?

5 MR. CORBETT: I can't think of any.

6 THE COURT: Is counsel satisfied that there is
7 a basis in fact for these pleas?

8 MR. CORBETT: I'm satisfied.

9 MR. LANDSMAN: Yes, Your Honor.

10 THE COURT: And there is no reason why he should
11 not plead guilty to these four additional bank robberies?

12 MR. CORBETT: No reasons why he should not.

13 THE COURT: The court having been apprised that
14 the defendant ^{has} has been found presently competent for
15 purposes of understanding the nature of the charges
16 against him and the consequences of a plea of guilty
17 to these respective additional indictments 75 CR 48,
18 49, 51, 52; ^{is} ~~you are~~ satisfied that the defendant under-
19 stands his rights, appears to be acting knowlegeably
20 and voluntarily; ^{and} that there is a basis in fact for each
21 of these pleas, and the pleas are therefore accepted.

22 Now, as I understand it, what remains
23 here is to impose a sentence with respect to the in-
24 dictment upon which he was tried, namely 75 Criminal
25 50; the court hereby imposes a sentence --

1
2 MR. APPLEBY: I understand that you're going to
3 adjourn that sentence?

4 THE COURT: No, I am not adjourning it.

5 Before I impose sentence I would like to
6 have the defendant understand that you have the right
7 to say anything to the court that you wish on your own
8 behalf. I refer to the facts that I have received your
9 letter dated April 28, 1976, which I have read, but if
10 there is anything additional you wish to say to the
11 court now is the time to say it.

12 DEFENDANT ANGUISH: I cannot think of anything
13 additional.

14 MR. APPLEBY: I want to preface my remarks by
15 saying that I have been authorized to state this by my
16 superiors, we feel non-custodial sentence would be in-
17 appropriate. We feel that the appropriate thing to do
18 in this situation would be to have custodial treatment.
19 We feel that the defendant is no different than any
20 other defendant who has emotional problems perhaps but
21 certainly it doesn't differentiate himself from many
22 other bank robberies. The jury in this case returned
23 a verdict in forty-five minutes, that was their answer
24 to their belief in the insanity of the defendant. I
25 think their verdict, especially the quickness of it

1 suggest that they didn't find Mr. Anguish too much
2 different from any other bank robbery. And Mr.
3 Anguish committed six bank robberies at gun point,
4 these were serious crimes and we feel that he's no
5 different from any other bank robber in any respect and
6 any treatment should be given should be given in a
7 custodial situation, especially due to the fact that
8 Dr. Goldstein indicated her sympathy for his situation.
9 Ordinarily the government doesn't take a position but
10 that's our position in this case.
11

12 THE COURT: As I said to you, first of all I
13 have been previously apprised of the kind of treatment
14 that you require is not available at Springfield, you
15 know that? I've been told that.

16 MR. APPLEBY: What kind of treatment are you
17 referring to?

18 THE COURT: I am referring to the kind of treat-
19 ment that he needs.

20 MR. APPLEBY: What is that?

21 THE COURT: The kind that his doctors have
22 recommended that he get; psychiatric treatment is not
23 available.

24 MR. APPLEBY: The Springfield --

25 THE COURT: The government does not have those

1 facilities.

2
3 MR. APPLEBY: I believe you may be incorrect
4 with that. I could check with Springfield whether
5 those facilities are available.

6 THE COURT: All they have is diagnostic expertise
7 to determine whether a prisoner is or is not competent
8 at a given time, either for the purposes of trial or
9 for purposes of determining whether the government
10 should bring him to trial because of the determinations
11 that he was competent at the time he committed the act.

12 Here I agree, the jury has rejected the
13 defense made by the defendant that he was insane or
14 incompetent at the time he committed the act which he
15 was tried. There is no disagreement about that; that
16 still does not answer the problem as to whether he is
17 or is genuinely in need of psychiatric treatment. The
18 latest ~~prisoner's~~ ^{Prison} report acknowledges that he is suf-
19 fering from mental illness. What I would propose to
20 do is to impose a term of incarceration, suspend the
21 execution of it for a period of 60 days on the express
22 condition that he shall receive as an in-patient at this
23 particular institute -- I mean stay the execution of
24 it so I may have the benefit of the report at the end
25 of that 60 days whether or not this treatment is

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2 accomplishing anything. Do you understand?

3 MR. APPLEBY: I understand. I also understand
4 that Your Honor by imposing this kind of a condition
5 would by necessity have in effect release control of
6 him.

7 THE COURT: All I can say is every indication is
8 that he is not of danger to himself or to society at
9 this time.

10 MR. APPLEBY: Well, Your Honor, I beg to differ,
11 these were six armed bank robberies. I know the agents
12 feel differently about this case.

13 THE COURT: As I pointed out a little while ago,
14 ^{from} the latest report he has not presented, indicated any
15 behavior problem as reported by prison personnel. I
16 think this is an area where a court has to use its best
17 judgment, and in this case I believe an opportunity
18 should be afforded the defendant to have something that
19 he, according to this report, he obviously needs and
20 cannot be provided by the federal system. It does not
21 have the facilities for that purpose.

22 MR. APPLEBY: That's Your Honor's position. I
23 just wanted you to understand what our position was.

24 THE COURT: Right; and as I say, what I propose
25 to do is impose a sentence of ten years (a) (2) on the

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2 indictment on which he was tried with credit for time
3 served, that sentence to be concurrent with respect
4 to each of the other indictments, four other indict-
5 ments to which he's just pleaded guilty, the execution
6 of the sentence to be stayed and the defendant ^{to} be
7 placed on a period of probation for 60 days on the ^A
8 special condition that he will be an in-patient in the
9 Paine Whitney Institute, and that he will be taken
10 there by a marshal and will be obliged to surrender to
11 a marshal at the expiration of the 60 day period.

12 I assume counsel can work out that he
13 will remain in custody pending your ability to have
14 him received at Paine Whitney Institute.

15 MR. CORBETT: We'll work that out as soon as
16 he can be received at the institution. One of the
17 marshals can bring him in and deliver him to the ad-
18 mitting people.

19 THE COURT: All right, that's the sentence of
20 the court.

21 MR. CORBETT: I'm just puzzled. Don't they have
22 some sort of direction -- the marshal is going to take
23 him up to Paine Whitney and turn him over and in effect
24 release him there to the ^{hospital.} ~~marshals.~~ Do they need any
25 directive to do that?

THE COURT: I'll sign any appropriate order.

MR. LANDSMAN: May the defendant see his mother
for a moment?

THE COURT: Yes.

(Whereupon court stood a recess for the day in
this matter.)

United States of America vs.

48
743655
upheld
cf 5-6-76
United States District Court for
EASTERN DISTRICT OF NEW YORK

DEFENDANT

CAYLOR ARQUISH

DOCKET NO.

75 CR 50

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 5 DAY 6 YEAR 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

John Corbett, Esq. and Mark Landman Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged

☒ GUILTY, in counts 1 and 2

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Sec. 2113(d) in that on or about July 2, 1974, the defendant, knowingly and wilfully by force, violence and intimidation, did take from the persons of employees of Bankers Trust of Suffolk, approximately \$8,396, in U.S. currency, which money was in the care, custody, control, management and possession of said bank the deposits of which were then and there insured by the F.D.I.C., and in the commission of this act did assault and place on jeopardy the lives of said employees by use of a dangerous weapon.

The defendant, should he have anything to say why judgment should not be pronounced, he has been heard. If no such statement was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 10 years

SENTENCE
OR
PROBATION
ORDER

on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(2) with credit for time served. Execution of sentence is stayed for 60 days on special condition that the defendant will be an in-patient at the Veterans Administration Hospital, Middleville Road, Northport, Long Island and that he be taken there by a United States Deputy Marshal and will be obliged to surrender to the Marshal at the end of the 60 days.

SPECIAL
CONDITIONS
OF
PROBATION

The defendant is also sentenced to 10 year concurrent terms on count 2 of each of four other indictments (75CR48, 75CR49, 85CR51, and 75CR52) to which he pleaded guilty, all to be concurrent with sentence imposed in 75CR50.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE 5/7/76

BY [Signature]

() CLERK

() DEPUTY

Date 5-7-76

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

49

----- X
UNITED STATES OF AMERICA
- against U.S. DISTRICT COURT E.D. NY
GAYLORD ANGUISH MAY 12 1976
Defendant
P.M.
----- X

ORDER

75 CR 48
75 CR 49
75 CR 50
75 CR 51
75 CR 52

M'FELMED

M'FELMED

WHEREAS the defendant GAYLORD ANGUISH was sentenced on May 6, 1976 by the Court to 10 years imprisonment on count 2 of indictment No. 75 CR 50 pursuant to Title 18, United States Code, Section 4208(a)(2) and whereas the defendant was also sentenced to 10 years concurrent terms on count 2 of each of four other indictments (75 CR 48, 75 CR 49, 75 CR 51 and 75 CR 52) and whereas the execution of sentence was stayed for 60 days on special condition that the defendant will be an in-patient at the Veteran's Administration Hospital, Middleville Road, Northport, Long Island and

WHEREAS the Court has been informed that the Veteran's Administration Hospital at Northport has determined that the defendant is presently not in need of in-patient psychiatric treatment, it is hereby

ORDERED that the United States Marshal for the Eastern District of New York transport the defendant forthwith from the Veteran's Administration Hospital at Northport to Metropolitan Correctional Center in order

- 2 -

to begin serving the sentence imposed by this Court
on May 6, 1976 and it is further

ORDERED that Dr. T. Troiano's "progress
notes" on the defendant at the Veteran's Administra-
tion Hospital be released to the custody of this
Court.

Dated: Brooklyn, New York
May 12, 1976

Edward R. Neaher

Judge Edward R. Neaher
United States District Judge
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

75 CR 50

GAYLORD W. ANGUISH, :

Defendant. :

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UNITED STATES OF AMERICA :

75 CR 48

-against- :

75 CR 49

75 CR 51

GAYLORD W. ANGUISH, :

75 CR 52

Defendant. :

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GAYLORD W. ANGUISH, :

Plaintiff, :

75 C 1346

-against- :

UNITED STATES OF AMERICA :

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GAYLORD W. ANGUISH, :

Plaintiff, :

75 C 1442

-against- :

UNITED STATES OF AMERICA :

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UNITED STATES OF AMERICA	:	
-against-	:	76 C 1269
GAYLORD W. ANGUISH,	:	MEMORANDUM
	:	AND
Defendant.	:	<u>ORDER</u>

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APPEARANCES:

DAVID G. TRAGER, ESQ.
 United States Attorney,
 Eastern District of New York
 By RICHARD APPLEBY, ESQ.
 Assistant U. S. Attorney

JOHN C. CORBETT, ESQ.
 Attorney for Gaylord W. Anguish

NEAHER, District Judge.

Defendant was convicted of armed bank robbery after a jury trial in which he offered the defense of insanity (No. 75 CR 50). On May 6, 1976, prior to the imposition of sentence, he withdrew his prior pleas of not guilty and plead guilty to indictments charging him with four additional armed bank robberies (Nos. 75 CR-48, 49, 51 and 52). He was thereupon sentenced to concurrent terms of ten years imprisonment on all armed robbery counts pursuant to

18 U.S.C. §4208(a)(2) with credit for time served. Defendant appealed his conviction in No. 75 CR 50 and that judgment was affirmed by the United States Court of Appeals without opinion on September 24, 1976, ___ F.2d ___ (2 Cir). He is now serving his sentence at Lewisburg Penitentiary.

Defendant on January 31, 1975 had originally plead guilty to the armed bank robbery count in No. 75 CR 50. Prior to sentencing on that plea, the court received psychiatric reports which raised questions as to the defendant's mental condition at the time of plea and also with respect to his responsibility at the time of the offense. On the application of new counsel the court permitted defendant to withdraw his plea of guilty and to plead not guilty by reason of insanity.¹ Between the time of his plea and his trial in April 1976 defendant was examined by seven or eight psychiatrists on behalf of the government and two private psychiatrists, nearly all of whom testified at his trial. There was no disagreement among them that the defendant was competent to stand trial. The difference in expert opinion related to his mental condition at the time of the commission of the bank robberies in 1974, and largely concerned the genuineness of a claimed amnesia extending back over a period

of years. The jury resolved that difference by rejecting the insanity defense and the Court of Appeals apparently found no reason to disturb its verdict.

Against that background, the court turns to a number of proceedings filed by the defendant pro se (except for a Rule 35 motion filed by his trial counsel), all of which are disposed of as indicated below.

1. No. 75 CR 50

On May 18, 1976, shortly after sentencing, defendant's trial counsel filed a Rule 35 motion on his behalf, urging a reduction of sentence. The ground advanced, that defendant "is in need of help", meaning psychiatric treatment, is but a renewal of the persistent contention that defendant was not responsible for his crimes and should be released so that he might receive psychiatric care. The court responded to that contention at the time of sentencing by staying execution of defendant's sentence for a period of 60 days to afford opportunity for in-patient treatment to be arranged by his counsel. As it turned out, neither the private institution, which had allegedly promised to treat him, nor the Veterans Administration Hospital on Long Island would receive him on

that basis. Indeed, the latter institution after examining him reported he was not in need of such care. Since that was a special condition of the stay of execution, he was accordingly turned over to the custody of the Bureau of Prisons to serve his sentence.

It is to be noted that the Bureau of Prisons on July 8, 1976 acknowledged the court's Form AO 235 recommendation that defendant receive psychiatric attention and advised that he was classified for participation in a psychotherapy program available at Lewisburg. A subsequent letter to defendant from the Warden, dated September 20, 1976, a copy of which was sent to the court by defendant's mother, reflects that he is receiving "limited psychiatric care" and that "in the event of a psychiatric crisis, [he] would be transferred to Springfield or possibly Danbury for such treatment . . . [if] the medical staff . . . felt that such treatment was necessary."

It is clear that such present needs for psychiatric care as defendant may require are not being ignored during his incarceration. Indeed, a series of letters the court has received from defendant quite clearly reflect not concern

for his present mental state but a preoccupation with the past motivations which led to the well-planned and well-executed series of armed bank robberies he undeniably committed. There was ample evidence to sustain the jury's rejection of his defense of lack of responsibility on the ground of insanity. Their verdict, affirmed on appeal, cannot be ignored by reducing a lenient sentence to the point where the seriousness of the crimes would virtually be denied. The Rule 35 motion is therefore denied.

2. Nos. 75 CR 48, 49, 51, 52

On July 21, 1976 defendant filed pro se a motion to withdraw his plea of guilty to each of the above-numbered indictments, which had been accepted on May 6, 1976 prior to sentencing in No. 75 CR 50, supra. The grounds advanced are (1) that he was under a mental disability of "amnesia" at the time he offered the pleas; and (2) that a promise by the court to place him on probation for 60 days, so he could receive psychiatric treatment, was not kept.

A review of the sentencing minutes of May 6, 1976 shows no substantial reason for entertaining defendant's

application. Defendant contends that when asked about the basis in fact for the four other bank robberies, his amnesia prevented him from actually recalling them and he could only answer "I'm convinced I did that." That contention is disingenuous in light of the trial testimony of witnesses who positively identified him as the perpetrator in each case, the government having offered the "other crimes" on the issue of his knowledge and intent. Other evidence corroborated those identifications.

As to the second contention, that the court promised a 60-day probation period for psychiatric treatment which was not kept, the short answer is that defendant was unable to comply with the condition attached. The sentencing transcript (p. 26) reflects that his incarceration was to be suspended "on the express condition that he shall receive treatment as an in-patient at this particular institute." The Paine Whitney Institute, however, refused to receive him as an in-patient. When this was made known to the court, the judgments of conviction entered on May 7, 1976, provided the same special condition for his stay at the Veterans Administration Hospital in Northport, Long Island. That hospital, as already noted, also would not take him as an in-patient. Under the circum-

stances, the stay of execution came to an end and he was properly turned over to the custody of the Bureau of Prisons. Defendant's motion to withdraw his pleas of guilty to the four other bank robbery charges is without merit and is accordingly denied.

3. No. 75 C 1346

On August 10, 1975 defendant, as plaintiff pro se, filed a handwritten complaint, presumably in the nature of a civil rights action. In it he alleges that on July 30, 1975 he was "incarcerated" in Terre Haute Federal Penitentiary and again on August 6, 1975 in Lewisburg "without being judged guilty of any crime or being sentenced by any court." Claiming to have been physically and mentally damaged by this "tort", he seeks damages of \$500,000.

Aside from the fact that a civil rights action does not lie against the United States, the only defendant named, and that a tort remedy may be pursued only as prescribed in 28 U.S.C. §2401, there is no basis in fact for such a claim. At the time of the alleged confinements, defendant had pleaded guilty to the indictment, in 75 CR 50 supra. As pointed out in the court's memorandum and order, note 1 supra, defendant,

who was in custody because of inability to make bail, underwent a series of psychiatric examinations in order to aid the court with respect to sentencing. As a result of the subsequent decision in United States v. Polisi, 514 F.2d 977 (2 Cir. 1975), the United States Attorney requested further examination pursuant to 18 U.S.C. §4244. This necessitated transfer of defendant from the Federal Detention Center in New York City to the Springfield Medical Center in Missouri. In the course of his return transportation from Springfield to New York defendant was lodged overnight at Terre Haute and Lewisburg on the dates alleged. He was thus legally in custody at all times referred to and his pro se action is "frivolous" within the meaning of 28 U.S.C. 1915(d) and is therefore dismissed.

4. No. 75 C 1442

On September 3, 1975, defendant, as plaintiff pro se, filed a petition, apparently under 28 U.S.C. §2255, complaining he was not receiving proper medical treatment at the Metropolitan Correctional Center. While acknowledging he had received treatment for an "injury to my head on July 31st 1975", from a doctor at MCC, he asserted it was "without results."

The petition is dismissed as moot since defendant was transferred from the MCC on or about May 13, 1976.

5. No. 1269

On December 27, 1976 defendant filed pro se an "amendment" to a prior §2255 motion he submitted in June 1976. The original motion attacked the validity of his sentence on the ground of failure to comply with Rule 32, F.R.Crim.P., subdivisions (f), (a) and (c).

Rule 32(f) entitles a defendant to a hearing before probation is revoked. It has no application to this defendant because he was never placed under probation supervision. As discussed in section 2, supra, had the defendant succeeded in being admitted as an in-patient for treatment by Payne Whitney Institute or the Veterans Administration Hospital, he would have been placed under probation supervision while in such custody. That did not occur and he remained in custody of the United States Marshals who properly turned him over to the Bureau of Prisons under the judgment of the court.

Rule 32(a) deals with imposition of sentence and notification of the right to appeal. The sentencing minutes

reflect that defendant was not afforded his right of allocution. It is well settled, however, that this is an error which may be raised only on direct appeal and not through a collateral remedy such as this motion under §2255. United States v. Malcolm, 432 F.2d 809 (2 Cir. 1970).

The court also notes that the sentencing minutes do not reflect the prescribed advice as to the defendant's right to appeal. That error was harmless, however, since an appeal from the judgment in No. 75 CR 50 was in fact taken, as already noted, and defendant was represented by counsel appointed by the court under the provisions of the Criminal Justice Act.

Defendant's contention that Rule 32(c) was violated is also without merit. The original presentence report had been made available to the court and his former defense counsel solely for purposes of sentencing after defendant's plea of guilty in No. 75 CR 50. The information in that report led the court to order pre-sentence psychiatric examination of defendant under 18 U.S.C. §4208(b). Eventually, in light of Polisi, supra, and the defendant's application to withdraw his guilty plea, the United States Attorney requested

additional examination under 18 U.S.C. §4244. Revelation of the presentence report in no way prejudiced the defendant but actually assisted him in accomplishing withdrawal of his plea.

None of defendant's Rule 32 claims provide any basis for vacating the judgment of conviction.

None of the eight additional grounds presented in the amendment to the §2255 motion were raised by defendant on appeal. Non-constitutional claims which neither singly nor in combination present any issue of constitutional dimension and which were not advanced on appeal may not be raised on collateral attack. Davis v. United States, 417 U.S. 333, 345-46 (1974); United States v. Loschiavo, 531 F.2d 659, 663 (2 Cir. 1976). Nor may matters of even constitutional import be relitigated where defendant deliberately bypassed normal appellate procedures. Kaufman v. United States, 394 U.S. 211, 227 n. 8 (1969); Williams v. United States, 463 F.2d 1103 (2 Cir. 1972). The inquiry is whether the claimed error was a "fundamental defect which inherently result[ed] in a complete miscarriage of justice." Davis v. United States, supra.

Turning to the first ground, the admission into evidence of a 1963 burglary conviction to impeach the testimony of a psychiatrist called as a witness by defendant, even if error because the burglary conviction was set aside in 1966, does not rise to constitutional dimension, in light of the psychiatrist's testimony that he was aware of the earlier conviction and that it did not alter his opinion that defendant's recent behavior was a radical change from a prior moral life.

Defendant's second and fourth grounds relate to testimony by the FBI agent who arrested him as to statements he made in which he admitted carrying out several bank robberies. A suppression hearing before trial delved into whether defendant had been apprised of his Miranda rights. The motion to suppress was denied, as he had read and signed, and indicated he understood, the waiver of rights form, although he was not orally advised of his rights. The denial of the motion, a possible ground on appeal, was deliberately bypassed and may not be raised here. Kaufman v. United States, supra. In any event the denial of the motion was proper. As to admission of the other bank robberies as

prior and subsequent acts on the government's rebuttal case, the statements were correctly admitted for the limited purpose, as was made clear to the jury, of showing defendant's state of mind, which he had placed in issue.

Defendant's third additional ground, that the prosecutor prejudiced the jury by stating that if defendant were found not guilty, an insane man, dangerous to society, would be set free, is not of constitutional dimension and was negated by the government's clear position that defendant was indeed sane.

The sixth ground, insufficiency of the evidence, is wholly baseless and not subject to collateral attack.

The issues of defendant's right to be present at trial mentally as well as physically and his ability to confront the witnesses against him formed part of the question of his competency to stand trial because of amnesia which was heard by this court and raised in slightly different fashion on appeal. The claim has been decided adversely to him and may not be relitigated. His conclusory allegation that new facts might be presented to support his defense is not a ground to vacate a sentence and is insufficient without more

to raise even the possibility of newly found evidence of such a nature that the newly discovered evidence would probably produce an acquittal, the standard necessary to justify a new trial. Tropiano v. United States, 323 F. Supp. 964, 966 (D. Conn. 1971).

Finally, the claim that defendant was denied the right to pre-trial release, attacks neither the validity of his sentence nor, collaterally, his conviction and may not be heard on §2255.

Defendant is not entitled to relief on any of the eight grounds in the amendment and the §2255 motion is denied in its entirety.

SO ORDERED.

Edward R. Neaber

U. S. D. J.

Dated: Brooklyn, New York
March 9, 1977

F O O T N O T E

- ¹ Memorandum and Order dated February 10, 1976.